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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198483
Party	Plaintiff PsyBar LLC
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Attachments	OPPOSER PSYBAR LLCs MOTION TO STRIKE.pdf (3 pages)(27470 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PsyBar, LLC,

Opposer,

v.

David Mahony, PhD.,

Applicant.

Opposition No.: 91198483

Serial No.: 85095429

**OPPOSER PSYBAR, LLC'S MOTION
TO STRIKE APPLICANT'S
RESPONSIVE PLEADING AND
MOTION FOR SUMMARY JUDGMENT
DATED MAY 27, 2012**

INTRODUCTION

Pursuant to T.B.M.P. §506; 509.01(a) and 528, *et.seq.*; and Fed. R. Civ. P. 56, Opposer PsyBar, LLC submits this Memorandum in support of its Motion for Summary Judgment and its Motion to Strike Applicant's Pleading dated May 27, 2012.

Applicant had until May 4, 2012 to file and serve his Response to Opposer's Motion for Summary Judgment. Applicant failed to do so. On May 1, 2012, Applicant requested PsyBar stipulate to an extension of time in which to answer. Applicant claimed he needed more time to respond "due to a family illness." *See Affidavit of James J. Kretsch, Jr.* At no time has Applicant served or provided Opposer with his Motion for an Extension of Time. It appears looking at the public record, Applicant now asserts his untimely filing should be accepted because of his inability to gather certain information within the requisite period of time. Because there is no legitimate basis to accept Applicant's late filing, they should be stricken.

ARGUMENT

Opposer filed its Motion for Summary Judgment on April 4, 2012. The Applicant had 30 days therefrom to file his Motion in Opposition. *See* T.B.M.P. §528.01. Pursuant to Fed. R. Civ.

P. 56(f), had Opposer needed additional time to conduct discovery, he needed to make that motion within the 30 day time period. No such motion was made and even if it had been, no notice was provided to PsyBar. *See Affidavit of James J. Kretsch, Jr.*

The Applicant's stated reason for needing an extension of time conflicts with the reason he presented PsyBar. *See Affidavit of James J. Kretsch, Jr.* At the eleventh hour, Applicant requested an extension of time allegedly due to a family illness. That request was denied. *Id.*

Upon filing his responsive pleadings, which were nearly a month late, Applicant suggests to the Court that his untimely pleading is: "Due to a delay in receiving supporting documents..." See the public record. Applicant has either lied to the Opposer or this Court. There is nothing within Applicant's exhibits that required additional time to gather. His tardiness is not a basis to extend the rules to the detriment of Opposer. This Court may strike said pleadings pursuant to T.B.M.P. §506, as well as the other aforementioned rules and statutes.

CONCLUSION

For the foregoing reasons, Applicant's Statement of Points and Authorities in Support of its Combined Motion for Summary Judgment and Opposition to the Motion for Summary Judgment of Opposer should be stricken from the record, along with all documents and attachments thereto. Applicant did not timely respond to PsyBar's Motion for Summary Judgment nor did Applicant timely seek a Motion for an Extension of Time. In addition, the reasons he stated to Opposer and to the Court for such tardiness are completely inconsistent. Neither excuse provides this Court with the authority to extend the applicable time period nor to accept Applicant's most recent pleading. As such, they should be stricken from the record.

Should the Court accept Applicant's extremely tardy pleadings it should, in the alternative, provide PsyBar with sufficient time to respond to the same since Applicant's pleadings contain significant misstatements.

Respectfully submitted,

KRETSCH & GUST, PLLC

Dated: June 4, 2012

s/Jaren L. Johnson

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